IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 30TH MAY 2007 / 9TH JYAISHTA 1929

Crl.MC.No. 3482 of 2005()

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IN C.C. NO.74/2005 ON THE FILE OF THE CJM COURT, THIRUVANANTHAPURAM

PETITIONERS/ACCUSED:

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1. FRANCIS ALBERT, S/O.ANTONY ALBERT,
   FEBIN COTAGE, CHERIYATHURA, VALLAKADAVU P.O.,
   THIRUVANANTHAPURAM.

2. STEPHEN F.ROSARIO, ADVOCATE,
   S/O.FRANCIS ROSARIO, SOSAMMA COTAGE,
   KOCHUTHOPPU, VALLAKADAVU POST,
   THIRUVANANTHAPURAM.

BY ADV. SRI.C.K.MOHANAN

RESPONDENTS/COMPLAINANT:

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1. STATE OF KERALA REPRESENTED BY
   THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

2. A.JAMES FERNANDEZ, S/O.ANTONY FERNANDEZ,
   JASMI NIVAS, G.V.RAJA ROAD,
   SANGUMUGHAM BEACH POST, THIRUVANANTHAPURAM.

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 30/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R.BASANT, J**

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**Crl.M.C.No.3482 of 2005**

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Dated this the 30th day of May, 2007

**ORDER**

Petitioners face allegations, inter alia, under Section 500 I.P.C. The crux of the allegations against the petitioners is that they at a press conference held by them (and in the materials distributed at such press conference) made statements to lower the complainant in the assessment of right thinking members of the community. The offence of defamation was thereby committed by the petitioners, it is alleged.

2. The learned counsel for the petitioners submits that the criminal prosecution initiated against the petitioners is vexatious and is a transparent attempt to abuse the process of the Court. The petitioners are reputed members of the community, the 1st petitioner being a business man and the 2nd petitioner being an advocate. The 2nd respondent/complainant is also an advocate. There is some intra organisational disputes between them, who are connected with Latheen Catholikka Aikyavedi. Because of such inter organisational dispute, false and frivolous allegations have been raised against the petitioners. In these circumstances, powers under Section 482 Cr.P.C may be invoked to bring to premature termination the proceedings against the petitioners, it is prayed.

3. In its crux, the allegation, I have already stated, is that the petitioners had made defamatory statements and had thus defamed the complainant. I have gone through the averments in the complaint. On this particular aspect, it clearly shows that imputations were allegedly made against the complainant in an attempt to justify the alleged expulsion of the complainant from the Latheen Catholikka Aikyavedi. I shall not encumber the records with any detailed narration of the allegations or by embarking on any unnecessary detailed discussions of the contentions which they want to raise. The allegations raised include the allegation that the complainant had illicit sexual relationship with a client who had approached him for availing professional services and that in such relationship, an illegitimate child was born. The petitioners allegedly held out that as a reason to justify the expulsion of the complainant from the organisation.

4. It appears to me from the materials presently available that if the allegations are true, the petitioners must make a defence. May be that the petitioners have the defence of the exceptions under Section 499 I.P.C. But the availability or acceptability of such exceptions cannot certainly be considered and accepted by the Court in proceedings under Section 482 Cr.P.C. Such contentions must be raised in the course of the trial and appropriate decision solicited.

The mere fact that the petitioners want to raise such a defence, is no reason certainly to invoke the powers under Section 482 Cr.P.C and quash the proceedings.

5. I have in this petition considered only the allegation under Section 500 I.P.C. I find that, at any rate, the prosecution in so far as it relates to the offence under Section 500 I.P.C must continue. The prosecution cannot, in these circumstances, be quashed. Whether the other allegations raised are sustainable or not need not in these circumstances be considered by this Court, it having been found that the prosecution at least in so far as it relates to the offence under Section 500 I.P.C is perfectly maintainable - whether the allegation be ultimately acceptable or not.

6. This Crl.M.C is, in these circumstances, dismissed. I may hasten to observe that the dismissal of this Crl.M.C will not in any way fetter the rights of the petitioners to raise all appropriate and relevant defences before the learned Magistrate in the course of the trial.

**(R.BASANT, JUDGE)**

rtr/-